



IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2836 OF 2007

Pandurang Gangadhar Ittewad
R/o E-9, Residential Quarters,
University Campus, Vishnupuri
Nanded

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Scheduled Tribes
Scrutiny Committee
Aurangabad Division
Aurangabad
3. Swami Ramanand Teerth Marathwada
University, Nanded
Through its Registrar
4. The Tahsildar and Taluka
Executive Magistrate, Udgir
Dist-Latur

RESPONDENTS

.....
Mr. A.S.Bayas, h/f Adv.S.B.Talekar for the petitioner
Mr. V.H.Dighe, AGP for respondents No.1 and 4
Mr.Shinde B.S. h/f Adv.V.P.Latange for respondent No.3
Mr.M.S.Deshmukh, Advocate for respondent No.2
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CORAM: P.V. HARDAS AND
A.V.POTDAR, JJ.

DATE : 13th March, 2009

PER COURT :

1. This petition, under Article 226 of the Constitution of India, takes exception to an order passed by the respondent Scrutiny Committee dated

24.04.2007 invalidating the tribe claim of the petitioner as belonging to Koli Mahadeo Scheduled Tribe.

2. Pursuant to the employment of the petitioner as a Peon in the Swami Ramanand Teerth Marathwada University, Nanded, certificate of the petitioner as belonging to Koli Mahadeo Scheduled Tribe came to be referred to the respondent Scrutiny Committee. The petitioner, in support of his claim as belonging to Koli Mahadeo Scheduled Tribe, tendered various documents which are enlisted in the order of the respondent Scrutiny Committee as documents at serial No.1 to 26. The Vigilance Cell enquiry came to be conducted and during the vigilance cell enquiry it transpired that the school record pertaining to the father of the petitioner was adverse to the claim set up by the petitioner. The school record in respect of caste of the sister of the petitioner's father i.e. petitioner's aunt was also adverse to the claim set up by the petitioner. The caste recorded in respect of the petitioner's father and petitioner's aunt was "Koli". The aforesaid entries date back to the year 1958. Even the caste of the brother of the petitioner was recorded as "Koli" and this was recorded sometime in 1985. The respondent Scrutiny Committee, therefore, when faced with the said contra evidence, invalidated the tribe claim of the petitioner. The

petitioner in support of his tribe claim had submitted various documents and one such document on which the petitioner heavily relied was the document which was a document in Urdu language in respect of grand father of the petitioner wherein his tribe was mentioned as Mahadeo Koli. The aforesaid document, which is enlisted as document No.23, is a document scribed on a stamp paper in respect of certain sale transaction. Undisputedly, the said document is not a registered document. The Committee, when faced with the said contrary evidence and while balancing the probative value of an unregistered private document on one hand and the public documents on the other, chose to rely on the public document i.e. the school record pertaining to the father of the petitioner and the aunt of the petitioner.

3. Mr.Bayas, learned counsel for the petitioner has urged before us that the document at serial No.23, which is a document scribed on a stamp paper denotes some sale transaction, has not been properly appreciated by the respondent Scrutiny Committee. The respondent Scrutiny Committee has ignored this document on the ground that it is a private document and is not a registered document. It is urged before us that the respondent Scrutiny Committee was under an obligation to examine and appreciate the said document de hors the fact that whether the said document was a

private or a registered document. For this proposition reliance is placed on the Division Bench judgment of this Court in "Sow Shailaja w/o Chandrashekhar Sangvikar V/s State of Maharashtra and others" 2008 (3) ALL MR 638. The Division Bench, in the said judgment, to which one of us (P.V.Hardas, J.) was member, has observed thus -

"In a given set of circumstances, even an unregistered document would be a document having not only just persuasive value but great probative value in establishing the claim set up by the party. Registration of document puts a seal of authenticity on the document, which is absent in the present case. Perusal of the order of the Respondent Scrutiny Committee also does not indicate that the petitioner has led any evidence in establishing the authenticity or genuineness of the document. The document, no doubt, is alleged to have been executed in 1938 and therefore by the sheer passage of time, it would have evidentiary value though it may not be a registered document. Even an unregistered document can be taken into consideration provided authenticity and genuineness of the document is established by proper evidence. In the present case, apart from tendering the document, no efforts have been taken by the petitioner in leading evidence for establishing authenticity and genuineness of the document apart from mere filing an affidavit. Apart from that, the school record of the real brothers of the petitioner clearly indicates that their caste was recorded as "Jangam" and not "Mala Jangam". School record of the real brother of the petitioner certainly have greater probative value and would be far out weigh the value to be attached to an unregistered document."

. The Division Bench in the aforesaid judgment has further expressed that in that case the petitioner, apart from tendering an unregistered

document, had not taken any efforts to lead evidence for establishing the authenticity and genuineness of the document, apart from mere filing of an affidavit. The Division Bench has dismissed the petition of the petitioner therein on the ground that the school record of the real brothers of the petitioner therein clearly indicated that their caste was recorded contrary to the claim set up by the petitioner therein.

4. Thus, applying the ratio laid down by the Division Bench in the judgment referred to above, we find that the respondent Scrutiny Committee has chosen not to place any reliance on the document at Serial No.23, yet the ultimate finding of the respondent Scrutiny Committee, that the said document being a private document and an unregistered document would not have any preference i.e. would not have greater probative value than the school record of the father and aunt of the petitioner, cannot be faulted with. The school record pertaining to the father and aunt of the petitioner dates back to 1958 and, therefore, would have far greater probative value and supersede private unregistered document of the nature which is referred as document at serial No.23 in the list of documents submitted by the petitioner before the respondent Scrutiny Committee.

5. The petitioner has amended the petition by placing on record the document i.e. a chargesheet in which the name of the grand father of the petitioner is disclosed as accused No.5 and his caste is disclosed as Mahadeo Koli. Efforts have been made by the petitioner to convince us to remit the matter back to the respondent Scrutiny Committee so that the Scrutiny Committee can afresh examine this document in the light of other documents. This document, obviously, had not been tendered by the petitioner during the course of enquiry which was conducted by the respondent Scrutiny Committee. As pointed by us above, record of the father of the petitioner, i.e. the admission extract of the father of the petitioner, aunt of the petitioner and brother of the petitioner clearly disclose the caste which was recorded as "Koli" and not as "Mahadeo Koli" as is presently claimed by the petitioner. The petitioner cannot get over the adverse entries recorded in respect of caste of his father, aunt and brother. The document, which is tendered before us by amending the petition, cannot, in law, supersede the said document, which is basic record pertaining to the father, aunt and brother of the petitioner.

6. It is urged by Mr.Bayas, learned counsel for the petitioner that the respondent Scrutiny Committee has not given any reasons as to why it has found that

the petitioner has failed to establish his ethnic linkage and affinity with Koli Mahadeo Scheduled Tribe. For the aforesaid purpose, reliance is placed on Division Bench judgement of this Court in writ petition No.7417/2007 dated 30th July 2008. The Division Bench of this Court, in the aforesaid judgment, has no doubt held that it was incumbent for the Scrutiny Committee to give reasons as to why it had found that the petitioner therein had not been able to establish his affinity and ethnic linkage. In any event, the respondent Scrutiny Committee has given some reasons, though the reasons may not be adequate. The petitioner has not pleaded in his petition the answers given by the petitioner and on what basis the aforesaid answers were correct and how the reasons of the respondent Scrutiny Committee in that behalf are incorrect. In the absence of adequate pleadings, it would not be possible for this Court to embark upon an enquiry to question the findings recorded by the Scrutiny committee that they are contrary to the established customs in respect of Koli Mahadeo Scheduled Tribe.

7. While exercising the writ jurisdiction, i.e. when examining the correctness of the order of the respondent Scrutiny Committee, which is a quasi judicial authority, this Court cannot be called upon to reappreciate the evidence. This Court cannot be

expected to act like an appellate court and reappreciate the evidence and / or the documents submitted by a party. Upon perusal of the order of the Scrutiny Committee we do not find any perversity in the reasoning to warrant any interference. The basic document relied on by the petitioner i.e. record of the father, aunt and brother of the petitioner is contrary to the claim set up by the petitioner as belonging to Koli Mahadeo Scheduled Tribe. As pointed out by us above, the unregistered document, a stray document showing the caste of the grand father of the petitioner as Mahadeo Koli would not, in law, supersede the document which are authentic and genuine in nature. In the light of that, therefore, we find that this petition is sans merits and, therefore, deserves to be dismissed. Accordingly, writ petition is dismissed with no order as to costs.

8. Mr.Bayas, learned counsel for the petitioner, states that the petitioner intends to submit a representation to the respondent University for extending the protection to the petitioner if available in law, on account of invalidation of his tribe claim. We make it clear that the petitioner may submit a representation to the University and if said representation is submitted the University to decide it in accordance with law.

[A.V.POTDAR]
JUDGE

[P.V. HARDAS]
JUDGE

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